

SENATE MOTION

MR. PRESIDENT:

I move that Senate Bill 81 be amended to read as follows:

- 1 Page 2, between lines 1 and 2, begin a new paragraph and insert:
- 2 **"Sec. 1. This chapter applies only to an offense that is any of the**
- 3 **following:**
- 4 **(1) Murder.**
- 5 **(2) A Class A felony.**
- 6 **(3) A Class B felony.**
- 7 **(4) A Class C felony."**
- 8 Page 2, line 2, delete "1." and insert "2."
- 9 Page 2, line 2, delete "has the meaning set forth" and insert **"refers**
- 10 **to deoxyribonucleic acid."**
- 11 Page 2, delete line 3, begin a new paragraph and insert:
- 12 **"Sec. 3. As used in this chapter, "offense" means to a felony to**
- 13 **which a petition under this chapter relates.**
- 14 **Sec. 4. As used in this chapter, "victim" means an individual**
- 15 **who would be entitled under IC 35-40-5-8 to receive information**
- 16 **about a release of the petitioner."**
- 17 Page 2, line 4, delete "2." and insert "5."
- 18 Page 2, line 5, after "may" insert **"file a written"**.
- 19 Page 2, line 5, delete "a court" and insert **"with the court that**
- 20 **sentenced the petitioner for the offense"**.
- 21 Page 2, between lines 13 and 14, begin a new paragraph and insert:
- 22 **"Sec. 6. A petitioner must give notice of the petition to the**
- 23 **prosecuting attorney for the county where the offense was allegedly**
- 24 **committed.**
- 25 **Sec. 7. The court shall give the prosecuting attorney an**
- 26 **opportunity to respond to the petition. The court may, in its**
- 27 **discretion, order a hearing on the petition."**
- 28 Page 2, line 14, delete "3." and insert "8."
- 29 Page 2, line 14, delete "giving notice of a petition filed under
- 30 section 2" and insert **"complying with section 7"**.
- 31 Page 2, line 15, delete "and an opportunity to respond to the

1 appropriate" and insert ",".

2 Page 2, line 16, delete "prosecuting attorney,".

3 Page 2, line 16, delete "order DNA testing and" and insert
4 **"determine whether the petitioner has presented prima facie proof**
5 **of the following:**

6 (1) That the evidence sought to be tested is material to
7 identifying the petitioner as:

8 (A) the perpetrator of; or

9 (B) an accomplice to;

10 the offense that resulted in the petitioner's conviction.

11 (2) That a sample of the evidence that the petitioner seeks to
12 subject to DNA testing and analysis is in the possession or
13 control of either:

14 (A) the state or a court; or

15 (B) another person, and, if this clause applies, that a
16 sufficient chain of custody for the evidence exists to suggest
17 that the evidence has not been substituted, tampered with,
18 replaced, contaminated, or degraded in any material
19 aspect.

20 (3) The evidence sought to be tested:

21 (A) was not previously tested; or

22 (B) was tested, but the requested DNA testing and analysis
23 will:

24 (i) provide results that are reasonably more
25 discriminating and probative of the identity of the
26 perpetrator or accomplice; or

27 (ii) have a reasonable probability of contradicting prior
28 test results.

29 (4) A reasonable probability exists that the petitioner would
30 not have:

31 (A) been:

32 (i) prosecuted for; or

33 (ii) convicted of;

34 the offense; or

35 (B) received as severe a sentence for the offense;

36 if exculpatory results had been obtained through the
37 requested DNA testing and analysis.

38 **Sec. 9. If the court makes the findings described in section 8(1),**
39 **8(2), 8(3), and 8(4) of this chapter, the court shall order DNA**
40 **testing and analysis of the evidence."**

41 Page 2, delete lines 17 through 42.

42 Page 3, delete lines 1 through 6.

43 Page 3, line 7, delete "5. (a)" and insert "**10.**".

44 Page 3, line 8, delete "3" and insert "**9**".

45 Page 3, delete lines 11 through 14.

46 Page 3, line 15, delete "6." and insert "**11.**".

47 Page 3, line 18, delete "7." and insert "**12.**".

Page 3, line 19, after "meets the" insert **"quality assurance and proficiency testing standards applicable to laboratories conducting forensic DNA analysis under IC 10-1-9."**

Page 3, delete lines 20 through 21.

Page 3, line 22, delete "8." and insert **"13."**

Page 3, line 34, delete "9." and insert **"14."**

Page 3, line 35, delete "section 2 of".

Page 3, line 41, delete ";" and insert **"in the possession or control of the state that could be subjected to DNA testing and analysis;"**.

Page 4, line 4, delete "10." and insert **"15. (a)"**.

Page 4, between lines 7 and 8, begin a new line block indented and insert:

"(2) That the DNA testing and analysis satisfies the pertinent evidentiary rules concerning the admission of scientific evidence or testimony in the Indiana Rules of Evidence."

Page 4, line 8, delete "(2)" and insert **"(3)"**.

Page 4, line 10, delete "(3)" and insert **"(4)"**.

Page 4, line 12, delete "(4)" and insert **"(5)"**.

Page 4, between lines 12 and 13, begin a new paragraph and insert:

"(b) Elimination samples from a third party shall be required only if:

(1) the petitioner has been excluded as the perpetrator or accomplice by DNA testing and analysis; or

(2) extraordinary circumstances are shown to require the DNA test and analysis.

If the court orders elimination samples from a third party, the court shall offer the third party the choice to provide a sample that can be obtained through the least intrusive method possible.

Sec. 16. (a) The prosecuting attorney may provide notification under the procedures of IC 35-40-12 when:

(1) the petitioner first files a petition for DNA testing and analysis under this chapter; and

(2) the prosecuting attorney knows the name and address of the victim.

If the court grants a petition for DNA testing and analysis, the prosecuting attorney shall provide notification if the name and address of the victim are known. A victim shall be notified of the results of the DNA testing and analysis.

(b) The name and address of a victim are confidential for purposes of this chapter.

(c) Notification of third parties regarding a court order to provide elimination samples shall be through the prosecuting attorney.

(d) If a petitioner is exonerated by DNA testing and analysis, the victim shall be notified before the petitioner's release.

Sec. 17. Regardless of whether a petition has been filed under this chapter, if:

1 **(1) a prosecuting attorney decides to order forensic DNA**
 2 **testing or analysis that was not previously performed on**
 3 **biological evidence that is related to the investigation or**
 4 **prosecution that resulted in a person's conviction; and**
 5 **(2) the testing will consume the remaining biological evidence;**
 6 **the prosecuting attorney must notify the person of the proposed**
 7 **DNA testing and analysis."**

8 Page 4, line 13, delete "11." and insert "**18.**".

9 Page 4, line 15, after "court" insert ":

10 **(1)".**

11 Page 4, line 15, delete "." and insert "; and".

12 Page 4, between lines 15 and 16, begin a new line block indented
 13 and insert:

14 **"(2) may make any further orders that the court determines**
 15 **to be appropriate, including any of the following:**

16 **(A) An order providing for notification of the parole board**
 17 **or a probation department.**

18 **(B) An order requesting that the petitioner's sample be**
 19 **added to the Indiana data base established under**
 20 **IC 10-1-9."**

21 Page 4, line 16, delete "12." and insert "**19.**".

22 Page 4, line 17, after "of" delete "the".

23 Page 4, line 19, delete ":" and insert "**order any of the following:**".

24 Page 4, delete lines 20 through 23, begin a new line block indented
 25 and insert:

26 **"(1) Upon motion of the prosecuting attorney and good cause**
 27 **shown, order retesting of the identified biological material**
 28 **and stay the petitioner's motion for a new trial pending the**
 29 **results of the DNA retesting.**

30 **(2) Upon joint petition of the prosecuting attorney and the**
 31 **petitioner, order the release of the person.**

32 **(3) Order a new trial or any other relief as may be**
 33 **appropriate under Indiana law or court rule."**

(Reference is to SB 81 as printed February 9, 2001.)

Senator ZAKAS